

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL SNELL AND WOODROW SNELL : CIVIL ACTION

Plaintiffs :

v. :

ROBERT J. DUFFY ET AL :

Defendants : NO. 02-3660

ORDER

AND NOW _____ day of _____, 2003, upon
consideration Defendants' Motion for Leave to file a Reply to
Plaintiff's Response to Defendants' Motion for Summary Judgment
and plaintiffs' response thereto, if any, it is hereby order that
said motion is granted. Defendants may file a reply to
plaintiffs' response to defendants' motion for summary judgment.

J.

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**DEFENDANTS' MOTION FOR LEAVE TO FILE A REPLY
TO PLAINTIFFS' RESPONSE TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Defendants, by their attorney, Randall J. Henzes, Deputy Attorney General, hereby move this court for leave to file a reply to plaintiffs' response to defendants' motion for summary judgment. In support of their motion, they rely on the attached memorandum of law.

Wherefore, the defendants respectfully request that their motion be granted.

D. MICHAEL FISHER
ATTORNEY GENERAL

BY: _____

Randall J. Henzes
Deputy Attorney General
Identification No. 53256

Susan J. Forney
Chief Deputy Attorney General
Chief, Litigation Section

Office of Attorney General
21 S. 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
Telephone: (215) 560-2136

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**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION
FOR LEAVE TO FILE A REPLY TO PLAINTIFF'S RESPONSE
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Plaintiffs Michael C. Snell and his son, Woodrow Snell ("Snells"), filed this federal action against the Pennsylvania State Police, Pennsylvania State Trooper Robert J. Duffy and Pennsylvania State Trooper Jeffrey Wlock. Michael Snell alleged that Duffy and Wlock arrested him on November 15, 1999 for simple assault, recklessly endangering another person and harassment without a warrant and without probable cause. He further alleged that he was subsequently prosecuted on the charges and was found not guilty by a jury. He alleged that his arrest and subsequent prosecution violated his constitutional rights.

Woodrow Snell alleged in the complaint and the amended complaint that Wlock pushed him unnecessarily causing him to strike his leg on an exposed screw of an ice bin. He alleged in his complaint and the amended complaint that such action amounted to a battery.

Duffy and Wlock moved for summary judgment. Plaintiffs filed a response in which for the first time they allege that Wlock's alleged push of Woodrow Snell violated his constitutional rights. Since plaintiffs' complaint and amended complaint never alleged that the alleged contact between Wlock and Woodrow Snell violated Woodrow Snell's constitutional rights, defendants never addressed the issue in their motion for summary judgment. Therefore, the defendants would like the opportunity to address the issue in a reply to plaintiffs' response to defendants' motion for summary judgment.

D. MICHAEL FISHER
ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I, Randall J. Henzes, Deputy Attorney General, hereby certify that a true and correct copy of Defendants' Motion for Leave to File a Reply to Plaintiffs' Response to Defendants' Motion for Summary Judgment was served on June 2, 2003, by United States mail, postage prepaid, first class to:

J. Michael Considine, Esquire
12 East Barnard Street
Suite 100
West Chester, Pa 19380

D. MICHAEL FISHER
ATTORNEY GENERAL

BY: _____

Randall J. Henzes
Deputy Attorney General
Identification No. 53256

Susan J. Forney
Chief Deputy Attorney General
Chief, Litigation Section

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Philadelphia, PA 19107-3603
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Fax: (215) 560-1031